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December 2, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: WT Docket No. 99-168  
Ex Parte Presentation

Dear Ms. Salas:

This concerns the proceeding which looks toward the adoption of service rules for the bands 746-764 MHz and 776-794 MHz.

One of the proposals made in that proceeding (by Motorola) calls for earmarking 6 MHz of spectrum for the needs of private radio users.

As an association which historically has represented the spectrum needs of numerous manufacturers, and as one of the agency's certified Part 90 frequency coordinators, MRFAC, Inc. ("MRFAC") has an abiding interest in spectrum management policies which make sense for the private radio world.

In this regard, MRFAC endorses the 6 MHz allocation referenced above. Such an allocation would help address the increasingly critical spectrum shortage affecting private radio users, especially in and near metropolitan areas.

MRFAC recognizes that this issue is, unfortunately, tied to the Congressional determination that the spectrum in question be licensed via competitive bidding. Given this, the Commission has little latitude in fashioning a licensing regime which takes account of the unique requirements of private radio users, e.g. the fact that manufacturers seldom need the wide area geographic coverage typical of commercial carrier systems and typical of the auctions that Commission has conducted to date.

Moreover, manufacturers and other industrial users are ill equipped to participate in spectrum auctions. Such an exercise is utterly foreign to the core competencies of manufacturers. Industrial operations require a million and one inputs in the form of raw materials, parts and components; price shopping between and among

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qualified suppliers is the norm but seldom, if ever, are these items purchased at auction. Indeed, the notion is antithetical to customary business planning and budgeting processes.

The Commission has raised the band manager concept as a means of complying with Congressional intent in the context of private radio licensing for this spectrum. MRFAC has a number of concerns regarding band managers (the chief one of which is the lack of specificity as to just what the concept would mean in practice). However, in an effort to reduce some of the uncertainty, MRFAC offers the following suggestions.

First, MRFAC urges the Commission to incorporate the concept of efficiency-based user fees in any band manager regime it might consider. Specifically, MRFAC would urge the Commission to require prospective band manager bidders to propose, as a condition of eligibility, a system for spectrum use fees that rewards efficient use of the spectrum and penalizes inefficient use.

In MRFAC's view such a requirement would be well within the agency's authority. The Act itself makes clear that the Commission is empowered to experiment with various auction design concepts. 47 U.S.C. Section 309(j)(3) ("The Commission shall seek to design and test multiple alternative [bidding] methodologies under appropriate circumstances.") Furthermore, the Act empowers the Commission to prescribe regulations "as to the citizenship, character, and financial, technical, and other qualifications of ... applicant[s] . . . and such other information as it may require." (*id.*, Section 308(b)); see also Section 303(r). Finally, an efficiency-based eligibility criterion would help conserve the finite public resource represented by the spectrum; thus, the proposal would be in accord with one of the Commission's bedrock responsibilities.

In MRFAC's view, an eligibility showing as to the bidder's plans for ensuring efficiency of use should be the bare minimum that the Commission should expect of any serious bidder. Such a showing should be specific in terms of the criteria that the proposed bidder would apply in determining the price that would be charged for use of a given amount of spectrum. The recently-introduced Private Wireless Spectrum Use Act (S. 1824) offers a useful guide in this respect.

Second. Besides proposing an efficiency-based approach, successful bidders should be required to publicly post their schedule of fees, and such fees should be subject to review and audit by the Commission in the event of a well-founded complaint of discriminatory or other unreasonable pricing. While MRFAC appreciates the Commission's desire not to become entangled in common carrier-type complaints, end users will have virtually no other avenue of redress especially if, as some have urged, only two band manager licenses were auctioned per market area. In such a scenario the marketplace would be very ineffective in controlling pricing -- witness the Commission's and consumers' experience with cellular pricing in the pre-PCS, duopoly days. Thus, a

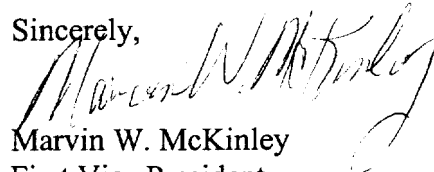
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measure of Commission oversight of band manages will be imperative (not the least because of the untried nature of the band manager concept).

MRFAC has had an opportunity to review the filing being made by The Boeing Company in respect of the band manager issue. MRFAC supports the broad outlines, if not necessarily all the details, of the Boeing comments.

An original and one copy of this letter are supplied for inclusion in the docket of this proceeding.

Sincerely,



Marvin W. McKinley  
First Vice President